



THE CHAIRMAN

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

June 12, 2001

The Honorable John D. Dingell  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
2322 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Dingell:

Your January 10, 2001, letter to Chairman Levitt and NASD Regulation President and Chief Executive Officer Mary Schapiro requested that we provide a six-month update on efforts to address "spoofing" or "phantom quotes," which can be used to manipulate Nasdaq share prices by creating fictitious quotations of only a few seconds duration.

I am pleased to report that recently the Commission brought another enforcement action to sanction this type of abuse. On May 3, the Commission entered a settled cease-and-desist order against Robert J. Monski. The order found that, between early October and mid-November 1997, Monski placed hundreds of small limit orders of only a few seconds duration in various thinly traded Nasdaq stocks to affect the National Best Bid or Offer ("NBBO") for the securities. Monski's purpose in placing the small orders was to trigger the execution of significantly larger limit orders that he had placed on the other side of the market. Once the larger order was executed, Monski cancelled the smaller limit order that had artificially moved the NBBO. The Commission's order found that this conduct violated the antifraud provisions of the federal securities laws. In addition to being subject to a cease-and-desist order, Monski was ordered to pay disgorgement and pre-judgment interest totaling \$15,000, as well as a \$10,000 civil penalty. A copy of the order is enclosed.

The Commission is continuing its efforts to address spoofing. In this regard, the Commission's inspection staff is reviewing the adequacy of recent upgrades in NASD Regulation surveillance programs to ensure these programs effectively detect such activity and other trading abuses.

The Honorable John D. Dingell  
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I hope that this information is useful. I appreciate your continued interest in ensuring that the nation's securities markets remain efficient, fair, and honest.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura S. Unger". The signature is fluid and cursive, with the first name "Laura" being more prominent.

Laura S. Unger  
Acting Chairman

Enclosure

cc: The Honorable W.J. "Billy" Tauzin, Chairman  
Committee on Energy and Commerce

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

Securities Act of 1933  
Release No. 7975 / May 3, 2001

Securities Exchange Act of 1934  
Release No. 44250 / May 3, 2001

Administrative Proceeding  
File No. 3-10465

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In the Matter of

ROBERT J. MONSKI,

Respondent.

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:  
: ORDER INSTITUTING PROCEEDINGS  
: PURSUANT TO SECTION 8A OF THE  
: SECURITIES ACT OF 1933 AND SECTION  
: 21C OF THE SECURITIES EXCHANGE ACT  
: OF 1934, MAKING FINDINGS, IMPOSING  
: REMEDIAL SANCTIONS AND  
: CEASE-AND-DESIST ORDER  
:

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether Robert J. Monski ("Monski") violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and to determine the appropriateness of disgorgement.<sup>1</sup>

II.

In anticipation of the institution of these administrative proceedings, Monski has submitted an Offer of Settlement ("Offer") that the Commission has determined to accept. Solely for the purposes of this proceeding and any other proceeding brought by or on behalf of the Commission, or to which the Commission is a party, and prior to a hearing and without admitting or denying the findings set forth herein, except as to jurisdiction over him and over the subject matter of this proceeding, which Monski admits, Monski consents to the entry of this Order Instituting

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<sup>1</sup> This matter is related to SEC v. Robert J. Monski, Civ. No. 1:01CV00943 (D.D.C.) (May 3, 2001) (ordering \$10,000 penalty by consent).

Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, Imposing Remedial Sanctions and Cease-and-Desist Order ("Order"). The Commission has determined that it is appropriate to accept Monski's Offer and accordingly is issuing this Order.

### III.

Based on the foregoing, the Commission finds that:

#### A. Respondent

Robert J. Monski, age 38, is a self-employed investor living in Birmingham, Alabama.

#### B. Monski's Manipulation of the NBBO

The Limit Order Display Rule, Rule 11Ac-4 under the Exchange Act (the "Display Rule"), requires a NASDAQ market maker, subject to certain specified exceptions, to display in the market maker's public quote a customer limit order that (1) is priced better than the market maker's quote, or (2) represents more than a de minimis increase to the size of the market maker's quote, if the market maker's quote is at the NBBO at the time the customer's limit order is received. One of the specified exceptions, Rule 11Ac-4(c)(7), provides that market makers are not required to display "all or none" customer limit orders. The Display Rule provides greater transparency by allowing the market to see improving customer limit orders and, consequently, enhances liquidity and execution opportunities for customer orders.

Between early October and mid-November 1997, Monski placed hundreds of small buy and sell limit orders (typically the one-hundred share minimum necessary to trigger the display requirement) to affect the NBBO of thinly traded stocks. Monski used the change in the NBBO that resulted from his limit order to trigger execution of pre-existing, significantly larger "all or none" limit orders he had placed on the *other* side of the market. Monski intended to use small limit orders to move the NBBO quote to meet the execution price of larger "all or none" limit orders which were purposefully placed with one of the many brokers that guarantee execution of customer orders of 1000 to 3000 shares at the NBBO regardless of the size of the NBBO quote. After moving the bid or offer quote to the desired price, Monski immediately attempted to cancel the one-hundred share order. In this manner, Monski manipulated the public quote to obtain better execution prices for hundreds of orders.

Monski's conduct, known in the industry as "spoofing," is illustrated by the following example:

- The NBBO for the targeted security is  $5 \frac{1}{32} \times 5 \frac{7}{8}$ .
- First, Monski places an all-or-none<sup>2</sup> limit order to sell short 500 shares at  $5 \frac{13}{16}$ , a price significantly above the best bid of  $5 \frac{1}{32}$  and slightly below the current best offer price of  $5 \frac{7}{8}$ . This order, because it is an all-or-none order, will not be displayed to the market.
- Second, Monski places, with a different broker, a limit order to buy 100 shares at  $5 \frac{13}{16}$ , the same price as his still unexecuted 500 share sell order. This 100 share bid price is significantly higher than the current best bid of  $5 \frac{1}{32}$ . Pursuant to the requirements of the Display Rule, the order is displayed and the NBBO bid price rises to  $5 \frac{13}{16}$ , resulting in an updated NBBO quote of  $5 \frac{13}{16} \times 5 \frac{7}{8}$ .
- Following this change in the NBBO, and consistent with the broker's execution guarantee, Monski's 500 share sell order is executed.
- Third, Monski attempts to cancel his 100-share buy order before it is executed. Thereafter, the NBBO quote updates to  $5 \frac{1}{32} \times 5 \frac{7}{8}$ .

#### IV.

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, prohibit the use of "any manipulative or deceptive device or contrivance in connection with the purchase or sale of any security." Section 17(a) of the Securities Act prohibits such conduct in the offer or sale of any security. Taken together the antifraud provisions prohibit trading designed to artificially affect the market price of a security. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 198 (1976). Indeed, the Commission has consistently held that Section 10(b) and Rule 10b-5 prohibit trades made for the purpose of manipulating stock prices because their effect "is to distort the character of the market as a reflection of the combined judgments of buyers and sellers." Halsey, Stuart & Co., SEC Release No. 34-4310 (1949). "In essence, a manipulation is the intentional interference with the free forces of supply and demand." See In the Matter of Pagel, Inc., et al., SEC Release No. 34-22280 (1985).

Monski repeatedly engaged in a precise pattern of conduct meant to affect the NBBO and permit execution of orders at prices that would not otherwise have been available in the market. Monski's actions interfered with the free forces of supply and demand and undermined the integrity of the NBBO. See In the Matter of Ian Fishman and Lawrence Fishman, SEC Release No. 34-40115 (1998). Accordingly, Monski violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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<sup>2</sup> As noted above, the Display Rule exempts all-or-none orders from being displayed. Consequently, the market maker will not display the order and, therefore, the order will not establish a new best offer even though its price is better than the current NBBO offer price.

V.

Based on the foregoing, the Commission finds that Monski violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

VI.

Accordingly, IT IS HEREBY ORDERED that Monski:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, cease and desist from committing any violations of, and committing or causing any future violations of, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

B. Shall pay disgorgement and prejudgment interest totaling \$15,000, consisting of \$5,000 payable within ten (10) days and the remainder plus post judgment interest calculated in accordance with 28 U.S.C § 1961 payable within six (6) months, of the entry of this Order by U.S. Postal money order, certified check, bank cashier's check, or bank money order, made payable to the Securities and Exchange Commission and shall transmit the payment by certified mail (return receipt requested) to the Office of the Comptroller, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312, under cover of a letter that identifies the respondent and the name and file number of this proceeding. A copy of the cover letter and of the form of payment shall be simultaneously transmitted to Gregory S. Bruch, Assistant Director, Division of Enforcement, U.S. Securities and Exchange Commission, Washington, D.C. 20549.

By the Commission.

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Jonathan G. Katz  
Secretary

  
/By:

**Margaret H. McFarland**  
Deputy Secretary

### SERVICE LIST

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the order instituting proceedings on each person named as a party in the order, or their legal agent.

The Order Making Findings, Imposing Remedial Sanctions, and Cease-and-Desist Order has been sent to the following parties:

The Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Office of the Administrative Law Judges  
Securities and Exchange Commission  
450 Fifth St. NW, Mail Stop 1106  
Washington, DC 20549-1106

Gregory S. Bruch, Assistant Director  
Securities and Exchange Commission  
Division of Enforcement  
450 Fifth St. NW, Mail Stop 0703  
Washington, DC 20549-0703

Robert J. Monski  
c/o Frederic L. Smith Jr.  
Bradley Arant Rose & White LLP  
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